

ENTERED

November 01, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JEWELL THOMAS,

§

Plaintiff,

§

V.

§

CIVIL ACTION NO. 2:22-CV-00133

CHRISTOPHER CARTER, *et al.*,

§

Defendants.

§

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

Before the Court is Magistrate Judge Mitchell Neurock's Memorandum and Recommendation ("M&R"). (D.E. 17). The M&R recommends that the Court: (1) **DISMISS** Plaintiff's § 1983 claims for money damages against the State of Texas and Christopher Carter and Bobby Lumpkin in their official capacities as barred by the Eleventh Amendment; and (2) **DISMISS with prejudice** Plaintiff's Eighth Amendment and ADA/RA claims against Christopher Carter and Bobby Lumpkin in their respective individual and official capacities as frivolous or for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). *Id.* at 1–2. The M&R further recommends that the dismissal of the case count as a "strike" for purposes of 28 U.S.C. § 1915(g). Plaintiff timely filed objections to the M&R. (D.E. 20).

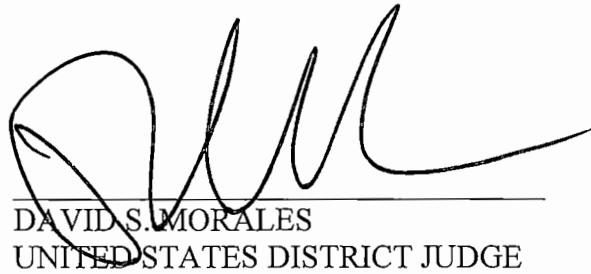
After having carefully reviewed the proposed findings and conclusions of the M&R, the record, the applicable law, and having made a de novo review of the portions of the M&R to which Plaintiff's objections were directed, the Court **OVERRULES** Plaintiff's objections. (D.E. 20). Accordingly:

- (1) The Court **ADOPTS** the M&R in its entirety. (D.E. 17).

- (2) The Court **DISMISSES** Plaintiff's § 1983 claims for money damages against the State of Texas and Christopher Carter and Bobby Lumpkin in their official capacities as barred by the Eleventh Amendment.
- (3) The Court **DISMISSES with prejudice** Plaintiff's Eighth Amendment and ADA/RA claims against Christopher Carter and Bobby Lumpkin in their respective individual and official capacities as frivolous or for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).
- (4) This dismissal is counted as a strike for purposes of 28 U.S.C. § 1915(g), and the Clerk of Court is **ORDERED** to send notice of this dismissal to the Manager of the Three Strikes List for the Southern District of Texas at Three_Strikes@txs.uscourts.gov.

A final judgment will be entered separately.

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Signed: Corpus Christi, Texas
October 31, 2022